



INTERIOR BOARD OF INDIAN APPEALS

Estate of Louise (Louisa) Mike Sampson

29 IBIA 86 (02/13/1996)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF LOUISE (LOUISA) : Order Affirming Decision
MIKE SAMPSON :
: Docket No. IBIA 95-39
:
: February 13, 1996

This is an appeal from a September 7, 1994, order issued by Administrative Law Judge William E. Hammett, denying a petition to reopen the estate of Louise (Louisa) Mike Sampson, Clallam No. 130-7884 (decedent), IP P0 218L 73-139. Appellant is Nikki (Niki) Elofson, decedent's granddaughter.

The original order in this estate was issued on September 19, 1973, by Administrative Law Judge Robert C. Snashall. In that order, Judge Snashall approved decedent's 1966 will, in which she devised her entire estate to Gerald (Jerry) Charles, Sr., whom she described as her adopted son. ^{1/} The Judge also found that decedent's heirs at law were appellant and her six siblings.

In July 1994, appellant filed a petition to reopen this estate, contending that she did not receive notice of the August 30, 1973, hearing in the estate and was not in the vicinity of the reservation at the time notice of the hearing was posted. She contended further that she

acquired knowledge and information necessary to question the initial decision approving the alleged will in November or early December 1993, and since that time has acted with due diligence to undertake reasonable attempts to gather information concerning the merits of her case and to locate qualified legal counsel for the purpose of pursuing her petition to reopen these proceedings.

(Appellant's Petition for Reopening at 4). Appellant stated that she wished to challenge decedent's will on the grounds that Gerald Charles had exerted undue influence upon decedent at the execution of her will and that decedent lacked testamentary capacity at the time she executed the will.

In his September 7, 1994, order, Judge Hammett found that notice of the August 30, 1973, hearing and notice of Judge Snashall's September 19, 1973, decision had been mailed to appellant and had not been returned as undelivered. He continued:

When the notices mailed to [appellant] at the above address [901 E. Capitol, Ellensburg, Washington 98926] were not returned as unclaimed, a presumption of actual notice not only of the

^{1/} The parties agree that decedent never formally adopted Gerald Charles although she raised him from infancy or young childhood.

hearing but of the decision emanating therefrom arose. [Appellant's] mere denial of actual notice made some twenty years after the events transpired is not sufficient to rebut the presumption that she received actual notice of the hearing and actual notice of and a copy of the order approving the decedent's will. It was the responsibility of [appellant] to plead facts and evidence which would establish that she not residing at the address to which the notice of hearing and the order with accompanying notice were sent or that, notwithstanding that she claimed another residence, she was not receiving mail from the residence to which the notices and order were mailed. The only evidence which the petitioner offers to support her sworn statement that she was living at an address other than the address mentioned above is a copy of a letter from [Central Washington State College] dated July 31, 1973, addressed to [appellant at] 405 West 9th, Ellensburg, Washington 98926. Given its greatest evidentiary weight, this letter merely supports the sworn statement of [appellant] to the effect that the records of the [College], as of July 31, 1973, tended to establish that [appellant] might have been residing at the 405 West 9th address at least some time in July 1973. Even then, the letter discloses that previous correspondence sent to such address had not been responded to by [appellant].

Departmental decisions have through the years expressed concern about stability of Indian titles and the need to expeditiously resolve issues, such as the ones advanced by [appellant], so that title may be assured in heirs and/or devisees. The extraordinary, and unique, authority of the Secretary to reopen estates notwithstanding the passage of time, must be tempered by a showing that the petitioner took reasonable measures to seek reopening at the earliest possible time. In the instant situation, [appellant] was 22 years old at the time the hearing was held. She knew that her grandmother was deceased and, presumably knew that her grandmother possessed interests in Indian allotments. In the opinion of this forum, some duty of inquiry on her part arose whether she received notice of a hearing and that duty of inquiry arose, in the instant situation, shortly after the decedent's death. If the relationship between the decedent and [appellant] were as close as [appellant] states it was in Article V of the petition, then, once [appellant] became aware of decedent's death, the duty of inquiry arose. It borders on the incredible that [appellant] did not make inquiry of the Bureau of Indian Affairs as to the status of her grandmother's trust property during the twenty one year period extending from the time the order was issued on September 19, 1973, to November or early December of 1993, when [appellant] alleges she first learned of the order.

Under the circumstances herein, I find that [appellant] did not exercise due diligence by reason that she failed to discharge her duty of making reasonable inquiry as to the status of dece-

dent's trust property shortly after the decedent's death (an affidavit of Sharon Zahler [decedent's sister], filed with the petition, indicates that [appellant] attended the decedent's funeral or at least was at the funeral home following the decedent's death.)

I further find that, under the circumstances herein, [appellant] has not established prima facie that the presumption of actual notice has been rebutted.

(Sept. 7, 1995, Order at 2).

On appeal to the Board, appellant continues to contend that she did not receive notice of the hearing or decision in decedent's estate. Further, she contends that Gerald Charles provided BIA with incorrect addresses for her and her siblings. She submits a number of documents showing various addresses for herself and some of her siblings during the late 1960's and early 1970's. She did not submit these documents to Judge Hammett.

While reaching no conclusion on the point, the Board assumes, for purposes of this decision, that appellant did not receive notice of decedent's probate hearing and did not receive notice of Judge Snashall's order approving will at the time it was issued in 1973. 2/

Judge Hammett also found that appellant failed to exercise due diligence in pursuing her claim. Appellant contends that she acted with due diligence from the time she learned about decedent's will in 1993. However, her only explanation for her failure to take any action in the 20-year period between 1973 and 1993 is that she was not aware that decedent owned trust property.

43 CFR 4.242(h) sets out the regulatory requirements for reopening Indian estates closed for more than 3 years. Another requirement, well established in Board decisions, is that persons seeking reopening of such estates show by compelling proof that they acted with due diligence in pursuing their claims. E.g., Estate of Little Snake (John Smith), 24 IBIA 121 (1993); Estate of Julius Benter (Bender), 17 IBIA 86 (1989); Estate of George Dragswolf, Jr., 17 IBIA 10 (1988); Estate of Woody Albert, 14 IBIA 224 (1986), and cases cited therein. Under this rule, "a claimant [is required] to act on his rights within a reasonable time after he knows or should know of them." Dragswolf, 17 IBIA at 12.

Appellant was an adult in 1973. She was aware of decedent's death at the time it occurred and aware of her own relationship to decedent. Thus, she had the knowledge necessary to put her on inquiry--that is, knowledge sufficient to alert her to make inquiries about decedent's estate. Benter, 17 IBIA at 90. Appellant does not now claim that she suffered from any

2/ The Board thus finds it unnecessary to determine whether appellant's newly produced evidence concerning her various places of residence can be considered in this appeal. The Board has a well-established practice of declining to consider evidence presented for the first time on appeal. E.g., Estate of Evan Gillette, Sr., 22 IBIA 133 (1992).

mental disability in 1973 which would have prevented her from making such inquiries. Cf. Albert (reopening permitted where petitioner was a minor at the time of probate and suffered from a mental disability). Appellant's arguments and evidence in this appeal are far from the compelling proof required by the Board decisions cited above.

The Board finds that appellant has failed to show by compelling proof that she acted with due diligence.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Hammett's September 7, 1994, order denying reopening is affirmed. 2/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative judge

3/ Arguments made by appellant and not discussed in this decision have been considered and rejected.